IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 11416 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER (IND) DGVCL - Petitioner(s)

Versus

PRATIMA PLASTIC INDUSTRIES - Respondent(s)

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Appearance :

MR RC JANI for Petitioner(s) : 1,
MR ARPIT A KAPADIA for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/02/2006

ORAL JUDGMENT

1.By way of this petition under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the

Gujarat Electricity Regulatory Commission dated 28.1.2005 in dismissing the appeal preferred by the petitioner on the ground of limitation.

2. It appears from the record that being aggrieved and dissatisfied with the decision taken by the Electrical Inspector dated 6.5.2004, the petitioner preferred appeal before the Gujarat Electricity Regulatory Commission. It is the case on behalf of the petitioner that in fact, there was no delay however, assuming that there was some delay, the delay was of 30 days only and the Gujarat Electricity Regulatory Commission has refused to register the appeal on the ground that the appeal is not filed within the stipulated period and that there is no provision of condoning the delay.

3. Shri R.C.Jani, learned advocate appearing on behalf of the petitioner has relied upon one order passed by the learned Single Judge of this Court (Coram: Hon'ble Mr. Justice K.S.Jhaveri, J.) passed in Special Civil Application No.14566 of 2005 dated 17.10.2005 by which the learned Single Judge has directed the Gujarat Electricity Regulatory Commission to decide the matter on merits after condoning the delay.

4. Shri A.A.Kapadia, learned advocate appearing on behalf of the respondent has submitted that if ultimately this Court condones the delay and directs the Gujarat Electricity Regulatory Commission to entertain the appeal then the Commissioner may be directed to decide and dispose of the appeal as early as possible as there is an order passed by the Electrical Inspector in their favour.

5. Considering the order passed by the learned Single Judge of this Court dated 17.10.2005 passed in Special Civil Application No.14566 of 2005 and for the reasons stated therein, the delay, if any, in preferring the appeal by the petitioner challenging the order passed by the Electrical Inspector dated 6.5.2004 is hereby condoned and the Gujarat Electricity Regulatory Commission is directed to entertain the said appeal and to decide and dispose of the same in accordance with law and on merits as early as possible preferably within a period of 3 months from the date of receipt of this order. It is, however, made clear that this Court has not expressed any opinion on the merits of the case and it is ultimately for the Gujarat Electricity

Regulatory Commission to take an appropriate decision in accordance with law and on merits.

6.Rule is made absolute to the aforesaid extent, however, there will be no order as to costs.

Direct Service is permitted.

(M.R.SHAH, J.)

kdc.